

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 00-02

**Application and Request of Pulp and Paper of America, LLC,
for Exemption from the Approval Requirements of RSA 162-H.
DECISION AND ORDER**

I. Introduction:

On December 18, 2000, Pulp and Paper of America, LLC, (PPA or Applicant) filed an Application and Request for Exemption from Approval Requirements of RSA 162-H (Application). PPA seeks an exemption from the certificate requirements of Chapter 162-H of the Revised Statutes of New Hampshire (RSA 162-H).

PPA owns and operates a large industrial pulp mill in Berlin, New Hampshire. The mill presently generates a significant portion of its electrical power on site. The Applicant proposes to replace two existing oil fired central steam plant boilers (Power Boilers Nos. 9 and 12), two turbines and a wood bark fired boiler (No. 14), and to install two new boilers capable of firing No.2 fuel oil, No. 6 fuel oil or natural gas. The project would include the installation of a 35 MW steam turbine and generator. If natural gas is chosen as a fuel source the facility would also include the design and construction of a pipeline from the existing Portland Natural Gas Transmission System line across property owned by the Applicant to the existing industrial plant.

The proposed facility is to be located on land owned by the Applicant in the City of Berlin, N.H.

On January 10, 2001, the Site Evaluation Committee held a public informational hearing in the City of Berlin to receive the Applicant's presentation, and to hear comments from the public and other interested persons.¹ Following the informational hearing, the Committee held a public meeting for discussion and deliberations. Upon a motion duly made and seconded the Committee voted, orally, to grant an exemption from the application process and to issue a written Decision and Order.

¹Notice of the public information hearing was published in the Berlin Reporter on December 27, 2000, in compliance with RSA 162-H: 10, I.

RSA 162-H normally requires that all aspects of an application to construct and operate an energy facility be reviewed by the Site Evaluation Committee over a nine month period, RSA 162-H:6, VII, and subject to certain procedural requirements such as input from state agencies, RSA 162-H: 6, public information hearings, RSA 162-H:10, I, and adversarial hearings, RSA 162-H: 10, II. The application process embodied in RSA 162-H is in lieu of the filing of separate applications for permits from various state agencies. RSA 162-H:7, VII. It is the purpose of the statute to ensure that the siting, construction and operation of energy facilities be “treated as a significant aspect of land use planning in which all environmental, economic and technical issues are resolved in an integrated fashion.” RSA 162-H:1, I. However, under certain circumstances the Committee may exempt an application from the approval and certificate provisions of the statute. RSA 162-H: 4, IV. It should be noted that exemption from the application and approval process before the Site Evaluation Committee does not exempt an applicant from regulation of the proposed project. An applicant who has been granted an exemption by this Committee is still subject to all federal, state and local regulations and permitting requirements. In this docket PPA has sought an exemption from the statutory process.

II. Statutory Criteria for Exemption:

RSA 162-H:4, IV, grants the Committee discretion to exempt an application from the statutory process if it determines that other existing statutes provide adequate protection of the objectives set forth in RSA 162-H:1. The discretion of the Committee is statutorily circumscribed by four requirements:

- (a) Existing state statutes, state agency rules or municipal ordinances provide adequate protection of the objectives of RSA 162-H:1;
- (b) A review of the application reveals that consideration of the application by only selected agencies represented on the committee is required and that the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H;
- (c) Response to the application from the general public indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the participating agencies; and
- (d) All environmental impacts or effects are adequately regulated by other federal, state or local statutes, rules or ordinances.

The Committee must find that an application satisfies all four of the statutory requirements before it may exercise its discretion to grant an exemption from the statutory process of RSA 162-H. An exempted application remains subject to the permitting, licensing and review authority of all federal, state and local government agencies.

III. PPA's Request for Exemption:

PPA appears before the Committee seeking an exemption because it is under an order of the United States Environmental Protection Agency (EPA) to comply with requirements of the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (40 CFR 63), subpart S: also referred to as the "Cluster Rules." In order to comply with the federal requirements, PPA asserts that it is committed to install two new package boilers which, in addition to replacing certain existing energy assets, will also serve as the combustion device for non-condensable gas streams (NCGs) collected from pulp mill sources, and off-gases from a condensate stripper. The Applicant proposes to replace two existing oil fired central steam plant boilers (Power Boilers Nos. 9 and 12), two turbines and a wood bark fired boiler (No. 14), and to install two new boilers capable of firing No.2 fuel oil, No. 6 fuel oil or natural gas. The facility would include the installation of a 35 MW steam turbine and generator. At present the exact fuel source is undetermined but will be determined after further study by the Applicant¹. Application, p. 3; Transcript, p.14,16, 25-26. If natural gas is chosen as a fuel source, the project would also include a pipeline from the existing Portland Natural Gas Transmission System pipeline across property owned by the Applicant to the existing industrial plant. Application, p. 2; Transcript, p. 16-17.

PPA argues that its application presents a uniquely compelling combination of factors for the exemption and that the Application can be granted consistent with the criteria set forth in RSA 162-H:4, IV. The Applicant presented several reasons for the granting of an exemption:

1. The Applicant advises that the project will be placed entirely within an existing heavy industrial site. This site is already one of the largest steam powered industrial processes in New Hampshire. Steam is the major source of energy for the wood pulping process and this large demand for process steam lends itself to the co-generation of electricity. Application, p. 2; Letter from James T. Wagner to SEC dated January 4, 2001 (Wagner Letter), p. 2 & 3; Transcript², p. 5 -6, 36.

2. The Applicant asserts that the proposed maximum turbine generating capacity (35 MW) barely exceeds the minimum generation capacity necessary to trigger the statutory jurisdiction of the Committee. In addition, most of the electricity to be generated would be consumed on site with an average of 9 MW of excess electricity to be delivered to the grid. Application, p. 2; Wagner Letter, p. 2; Transcript, p. 20 - 22.

3. The Applicant also claims that the turbine is needed to comply with EPA mandated air emission controls. PPA argues that air emissions reduction is a very significant public benefit to New Hampshire and to the City of Berlin. The EPA and the State of New Hampshire have established deadlines for compliance that, according to the Applicant, cannot be

¹The Applicant asserts that the fuel source will be either No. 2 fuel oil, No. 6 fuel oil, natural gas or some combination. The application itself describes two alternate routes for a natural gas pipeline and a 680,000 gallon fuel oil reserve tank.

²References to testimony and evidence taken at the public informational hearing held in Berlin, N.H., on January 10, 2001, are cited as "Transcript" followed by the page number.

further postponed. An exemption from the statutory process would permit PPA to come into timely compliance. Application, p. 1 & 3; Wagner Letter, p. 2; Transcript, p. 6 - 7.

4. The proposed steam powered turbine replaces existing, smaller steam turbines that already operate on the site. This existing facility generates 12 MW. In this sense, PPA argues that the proposed turbine is merely an alteration or modernization of an existing electric generation facility. There will be no substantial construction negatively affecting the environment. Application, p. 1; Wagner Letter, p. 2.

5. The Applicant also relies upon the location of the proposed facility as part of its request for an exemption. PPA is a major employer in the North Country, and claims that this project is vital to the continuation of its existence by maintaining and potentially improving its competitiveness in the industry. Accordingly, PPA asserts that the project offers a combination of preservation of manufacturing jobs as well as environmental improvement for the largest city in northern New Hampshire. The Applicant believes that this combination of factors has created strong local support for the project. Wagner Letter, p. 2.

6. The Applicant also asserts that the primary area of regulation affected by the proposed project is within the regulatory jurisdiction of the EPA and the New Hampshire Department of Environmental Services. Transcript p. 36 -39. Therefore, according to PPA, the broad approach envisioned by the statutory process of RSA 162-H is unnecessary to ensure compliance with all applicable regulations.

PPA, in addition to the foregoing arguments for exemption, has also made certain representations and commitments to the Committee. Specifically, the Applicant has represented that:

A. PPA understands that an exemption from the statutory process pursuant to RSA 162-H: 4, IV, pertains only to review by the Site Evaluation Committee and is not an exemption from any applicable federal, state or local requirements. PPA has committed to consult with each federal, state and local agency, even if PPA believes that an agency's regulations are inapplicable. Wagner Letter, p. 1; Transcript, p. 37.

B. PPA will maintain a minimum ten day supply of reserve fuel at all times. Transcript, p. 51 & 65. A ten day reserve should serve to maintain market stability in times of short supply of fuel oil.

C. In deciding the design and configuration of its proposed natural gas pipeline, PPA will consult with and consider the interests of the local community and include in that consideration the size of the spur so that natural gas may be transported to portions of the community which presently do not have natural gas service. Application, p. 5; Transcript, p. 27 & 31.

D. PPA will continue to pursue the interconnection study which has been presented to the New England ISO and will maintain and ensure the reliability and integrity of the regional electric grid. Transcript, p. 17 - 19, 51, 73.

E. The design and construction, as well as safety standards, of any natural gas pipeline within the project will be subject to regulation by the New Hampshire Public Utilities Commission. Transcript, p. 51, 65.

The Applicant asserts that, based upon the foregoing reasons and the representations and commitments made by the Applicant, an exemption from the statutory site evaluation process pursuant to RSA 162-H:4, IV, should be granted.

IV. Consideration of Statutory Criteria for Exemption Pursuant to RSA 162-H:4, IV:

After comprehensive review of PPA's Application, its presentation before the Committee and the response of the public to the request for an exemption, the Committee is convinced that we should exercise our discretion to exempt this Application from the statutory site evaluation process. In coming to this decision the Committee has considered each of the statutory requirements for exemption and the representations and commitments made by the Applicant.

1. Existing state statutes, state agency rules or municipal ordinances provide adequate protection of the objectives of RSA 162-H:1.

The objectives of RSA 162-H:1 are: a.) to maintain a balance between the environment and the need for new energy facilities; b.) to avoid undue delay in the construction of necessary facilities; c.) to ensure that the siting, construction and operation of facilities are treated as a significant aspect of land use planning in which all environmental, technical, and economic issues are resolved in an integrated fashion so as to assure an adequate and reliable supply of electric power in conformance with sound environmental utilization. RSA 162-H:1, I & II.

As the Applicant has correctly recognized, exemption from the statutory process of RSA 162-H does not relieve PPA from the requirements of any federal, state or local statutes, regulations or ordinances. The project will be subject to all of the federal statutes and regulations administered by the EPA. The New Hampshire Department of Environmental Services will administer the state environmental laws and regulations. The Public Utilities Commission will regulate the design, construction and safety aspects of the proposed natural gas pipeline. Additionally the project will be subject to the zoning, planning and building ordinances and regulations of the City of Berlin. Because the bulk of the project will be constructed completely within the industrial site presently occupied by the Applicant's pulp mill, there does not appear to be any effect upon wetlands, public lands, forests, protected plant or animal species, historic sites, or fish and wildlife management. Nonetheless, the Applicant has committed itself to consultation with the state agencies responsible for such resources.

In addition to the installation within the footprint of the pulp mill the Applicant may design and construct a natural gas pipeline which would extend from the existing Portland Natural Gas Transmission System line across land owned by PPA to the pulp mill site. Application, p. 2; Transcript, p. 16-17. The line would not cross any state highways or roads but would cross, perpendicularly, two city streets.¹ PPA would be subject to local regulation with

¹PPA has also proposed an alternate pipeline route which would run along an abandoned railroad bed and into the

regard to those crossings. PPA would also be subject to regulation by the Public Utilities Commission over the design, construction and operation of the proposed pipeline and the Department of Environmental Services with regard to any disturbances to the natural environment.

The Committee finds that existing federal, state and local statutes, regulations and ordinances will provide adequate protection of the objectives of RSA 162-H:1. The largest impacts stemming from this project appear to be well within the authority of the EPA, the Department of Environmental Services and the Public Utilities Commission. The laws administered by these agencies adequately protect the environment and the health, safety and welfare of the citizens of the State.

2. A review of the application reveals that consideration of the application by only selected agencies represented on the committee is required and that the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H.

As indicated in the foregoing section many of the agencies represented on the Committee would not generally administer laws or regulations pertaining to the project contained within this Application. This is the result of the fact that the project will be constructed, for the most part, within the footprint of the Applicant's existing industrial facility and does not involve the disturbance of the natural environment which is normally associated with the design and construction of new electric generation facilities. The project does amount to the replacement of an older electric generation facility with a new, cleaner facility which will also provide some additional electric generation capacity for the region. The New Hampshire Department of Environmental Services and the Public Utilities Commission are the state agencies which appear to have the greatest regulatory interest and can adequately regulate the project in such a fashion so as to protect the objectives of RSA 162-H:1.² It is not necessary to exercise the complete procedural apparatus of RSA 162-H in order to protect the statute's objectives.

3. Response to the application from the general public indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the participating agencies.

In order to hear from the public with regard to the Application, the Committee held a public hearing in Berlin on January 10, 2001. The meeting was attended by at least sixty two members of the public. Transcript, p. 64. All members of the public who spoke at the meeting advised the Committee that they supported the project and the proposal for exemption from the statutory site evaluation process embodied in RSA 162-H. The public comment favoring the Application included statements based upon the economic stability of the North Country, Transcript, p. 54-55, and the environmental benefits of the project, Transcript, p. 63. Additionally, the Applicant provided favorable written correspondence from several state officials and several businesses and business associations in the North Country. Nobody

pulp mill site. Transcript, p. 17.

²The Committee is also aware and recognizes that the proposed facility will be subject to regulation by federal agencies such as the EPA and local agencies such as the Berlin Planning Board, the Berlin Zoning Board and the Building Inspector of the City of Berlin.

appeared at the public hearing to oppose the application. Transcript, p. 64. The Committee has received no written opposition to the Application and no one has sought intervenor status in this docket.

The record clearly reflects that the response received from the general public throughout the pendency of this Application indicates that the statutory objectives of RSA 162-H: 1, can be met through the individual review processes of the relevant state agencies.

4. All environmental impacts or effects are adequately regulated by other federal, state or local statutes, rules or ordinances.

The primary incentive for the Applicant to pursue the project contained within the Application is its need to comply with the directives of the EPA as expressed through the "Cluster Rules." The environmental effects of this project appear to reside within the jurisdiction of the EPA and the New Hampshire Department of Environmental Services. In addition, the project will be subject to local zoning, planning and building ordinances. Since most of the construction associated with the project will occur within the already existing industrial complex owned by the Applicant, it appears that existing federal, state and local regulations and ordinances will limit the possible environmental impacts. The project will result in the modernization of an existing electric generation facility which can no longer comply with the rules and regulations promulgated by the EPA. The project should, on balance, ensure that the Applicant, in the operation of its mill, can comply with the new environmental rules and should result in cleaner and more efficient generation of electricity at the already existing facility.

Under these unique circumstances the Committee finds that the environmental impacts and effects of the project can be adequately regulated by the aforementioned federal, state and local agencies without the need for a complete site evaluation proceeding before the Committee.

V. Conclusion

The objectives of RSA 162-H:1, are normally best protected by the process and procedures set forth within the statute so as to ensure that the siting, design, permitting and construction of energy facilities are subject to an integrated administrative process which can consider all of the environmental, technical, and economic effects of an application. The Application before the Committee, however, presents a unique set of circumstances which warrant the granting of an exemption from the statutory site evaluation process set forth in RSA 162-H. The proposed project, for the most part, will exist within the confines of an already existing heavy industrial site and will replace an existing electric generation facility with a cleaner and more efficient cogeneration facility. Additionally, the Application, the evidence presented at the public hearing and the representations and commitments made by the Applicant satisfy the statutory criteria for exemption set forth at RSA 162-H:4, IV. Therefore, the Committee will exercise its discretion and grant the Applicant an exemption from the statutory process of RSA 162-H for the project contained in its Application which has been docketed as No. 00-02.

ORDER

Whereas, Pulp and Paper of America, LLC (PPA) is under an order of the United States Environmental Protection Agency to comply with requirements of the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (40 CFR 63, subpart S.) And, in order to comply with the federal requirements, PPA is required to install new efficient facilities to reduce noxious emissions; and,

Whereas, the Site Evaluation Committee finds that the proposed facilities will replace existing facilities which are viewed as environmental emitters; and,

Whereas, existing state statutes, state agency rules and municipal ordinances provide adequate protection of the objectives of RSA 162-H:1; and,

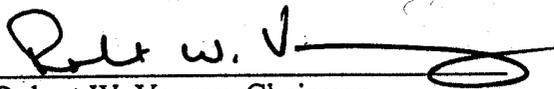
Whereas, the Committee finds that consideration of the application by only selected agencies represented on the SEC is required and that the objectives of RSA 162-H:1, can be met by those agencies without exercising the provisions of RSA 162-H; and,

Whereas, a public informational hearing held on January 10, 2001, revealed that the public supports the application and the public comments indicate that the objectives of RSA 162-H:1, can be met by those state agencies without exercising the provisions of RSA 162-H; and,

Whereas, all environmental impacts or effects are adequately regulated by federal, state or local statutes, rules or ordinances. It is hereby:

ORDERED, that the request of Pulp Paper of America, LLC, Docket No. 00-02, to be exempted from the provisions of RSA 162-H to obtain a Certificate of Site and Facility is granted pursuant to RSA 162-H:4, IV.

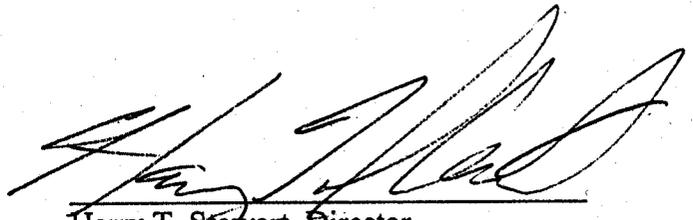
So Ordered, this 26th day of January, 2001.



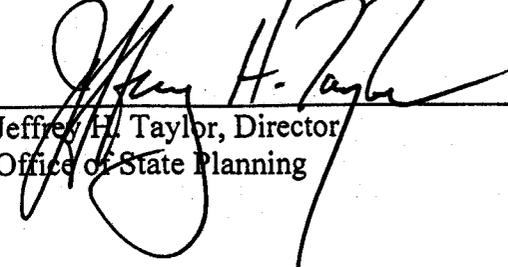
Robert W. Varney, Chairman
Commissioner, Department of
Environmental Services



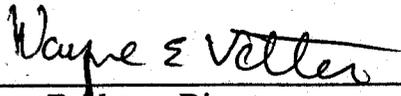
Douglas L. Patch, Chairman
Public Utilities Commission



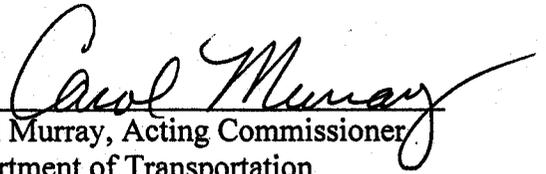
Harry T. Stewart, Director
Water Division
Department of Environmental Services



Jeffrey H. Taylor, Director
Office of State Planning



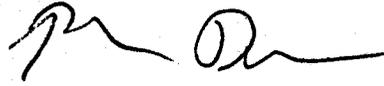
Wayne E. Vetter, Director
Fish and Game Department



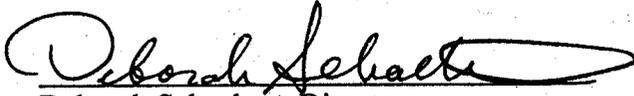
Carol Murray, Acting Commissioner
Department of Transportation



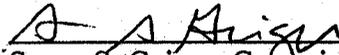
Kenneth A. Colburn, Director
Air Resources Division
Department of Environmental Services



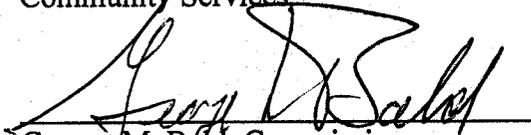
Brook Dupee, Assistant Director
Office of Community & Public Health
Department of Health & Human Services



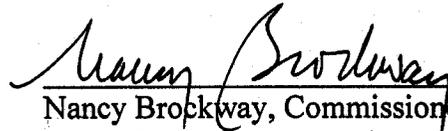
Deborah Schachter, Director
Governor's Office of Energy &
Community Services



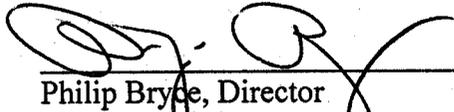
Susan S. Geiger, Commissioner
Public Utilities Commission



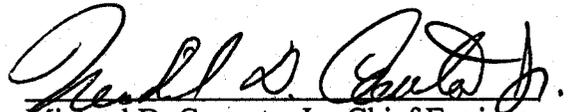
George M. Bald, Commissioner
Department of Resources & Economic
Development



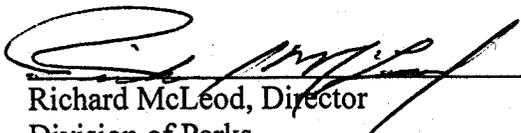
Nancy Brockway, Commissioner
Public Utilities Commission



Philip Bryce, Director
Division of Forests & Lands
Department of Resources & Economic
Development



Michael D. Cannata, Jr., Chief Engineer
Public Utilities Commission



Richard McLeod, Director
Division of Parks
Department of Resources & Economic
Development